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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,143	08/20/2004	Stephen Watkins	056222-5059	5717

9629 7590 10/13/2006

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/505,143

**Applicant(s)**

WATKINS ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS; WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/20/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-9 are pending in this application.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 6, 7 and 8 objected to because of the following informalities:

Claims 6, 7 and 8 recite the limitations "composition or method". The claims should depend of the recited method claims or composition claims separately. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 5-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Dubief et al. (US 6,190,676 B1).

Dubief et al. (US' 676 B1) teaches a cosmetic hair composition comprising ceramide and psedoceramide (ceramide 2) (bishydroxyethyl biscetyl malonamide) as claimed in claims 1 and 6-8 (see col. 6, lines 23-26 and col. 7, line 60) and wherein the composition is used as a dyeing composition (see col. 8, lines 30-32). Dubief et al. (US' 676 B1) also teaches a process for treating and protecting hair by applying to the hair the composition as described above and as claimed in claims 4 and 5 (see col. 8, lines 43-47). Dubief et al. (US' 676 B1) teaches all the limitations of the instant claims. Hence, Dubief et al. (US' 676 B1) anticipates the claims.

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3 Claims 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Douin et al. (US 2001/0028887 A1).

Douin et al. (US' 887 A1) teaches a method comprising applying to the hair a composition comprising ceramides or pseudoceramindes (see page 13, paragraph, 0271) and wherein the composition be applied before or after a procedure of dyeing the hair which is identical to the claimed method as claimed in claim 9 (see page 13, paragraph, 0280). Douin et al. (US' 887 A1) teaches all the limitations of the instant claim. Hence, Douin et al. (US' 887 A1) anticipates the claim.

***Claim Rejections - 35 USC § 103***

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US 6,190,676 B1).

Dubief et al. (US' 676 B1) teaches a cosmetic hair composition comprising ceramide as claimed in claim 1 (see col. 7, line 60).

The instant claims differ from the reference by reciting a composition comprising specific percentage amounts of the ceramide compounds.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition by optimizing the amounts of the ceramide compounds in the composition in order to get the maximum effective amounts of the

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ceramide compounds in the composition. Such a modification would be obvious because Dubief et al. (US' 676 B1) clearly teaches that the concentration of the ceramide compounds can be vary from 0.005 to 3% (see col. 8, lines 18-22) and wherein the amounts suggested by the reference are overlapped with the claimed amounts, and, thus a person of the ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

### ***Conclusion***

5 The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

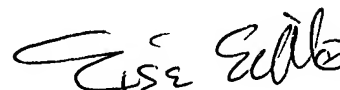
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Eisa Elhilo'.

Eisa Elhilo  
Primary Examiner  
Art Unit 1751

October 5, 2006